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HAROLD B. WILLEY, C

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 399

LAND SETTLEMENT AND DEVELOPMENT CORPORATION,

Petitioner,

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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No. 399

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v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Claims entered in the above entitled cause on July 13, 1953.

Opinion Below

The opinion of the United States Court of Claims (R. 29), is reported in 113 F. Supp. 666.

Jurisdiction

The judgment of the Court of Claims was entered on July 13, 1953, (R. 29). Jurisdiction of this Court is invoked under Section 1255 (1) of Title 28 of the United States Code.

Questions Presented

By Presidential Proclamation the date of the cessation of World War II hostilities was fixed as December 31, 1946. The Court below, however, held that as to claimants in the Philippine Islands, its statute of limitations, which had been suspended as a result of World War II, again commenced to run on September 2, 1945, (the date of Japan's formal surrender), on the ground that access to that court by such claimants again became possible on that date. The questions for decision are:

1. Whether the court below usurped, erroneously, a function of the political branches of our Government by selecting, on its own, a date as the logical one to lift the wartime suspension of its statute of limitations.
2. Whether the date selected by the Court for that purpose was so erroneous as to require reversal.

Statutory and Other Provisions of Law Involved

The pertinent provisions of the statute, Presidential Proclamation and Regulations involved are set forth in the Appendix, *infra*, pp. 12-14.

Statement

Petitioner is a Philippine corporation, owned and controlled by the Republic of the Philippines. It is successor to an earlier corporation which had been owned and controlled by the former Commonwealth of the Philippines. (R. 1).

World War II began in the Philippines on December 8, 1941, Philippine time. Over the period between December 8, 1941, and May 31, 1942, the United States Armed Forces in the Far East commandeered certain of petitioner's predecessor's equipment, chiefly vehicular machines, valued by petitioner in the amount of $115,044.17. (R. 3).

Commencing about December 31, 1941, the Philippine Islands were designated as enemy territory, and commercial intercourse between the Islands and the United States was prohibited by our Government. These restrictions were not completely lifted until August 31, 1946, when the Secretary of the Treasury, by General Ruling No. 18, permitted the transfer of funds from the Philippines to the United States (App. p. 13). On December 31, 1946, the President of the United States proclaimed the cessation of hostilities of World War II. (App. p. 12).

On February 11, 1948, petitioner's predecessor filed a claim for the fair value of the commandeered property with the Philippine-Ryukus Command Claims Service of the United States Army. (R. 1, 17).

However, on April 12, 1948, its claim was dismissed, for the stated reason that no authority was vested in the Claims Service to pay claims submitted by the former Commonwealth of the Philippines or any public corporation owned, in whole or in part, by it. (R. 2, 20).

On July 23, 1952, having succeeded to the title and interest of its predecessor therein, petitioner brought suit on the claim in the court below. Respondent moved to dismiss, on the ground, *inter alia*[1] that the suit was barred because it should have been filed not later than September 2, 1951, (i.e. within six years after September 2, 1945, the date of Japan's formal surrender), "selected" by the court below in *Marcos* v. *United States,* 122 C. Cls. 641, 106 F. Supp. 172, as the logical date to terminate the wartime sus-

[1] The first ground for dismissal urged below by respondent was that between 1942 and 1944 the Philippine Commonwealth Government existed in the United States in exile; that therefore, petitioner and its predecessor having been owned and controlled by the Commonwealth Government, could have brought suit in the Court of Claims during that time, and the statute of limitations was not suspended as to it because of the war in the Philippines. That contention the court below rejected in its entirety. (R. 30).

pension of the statute of limitations, and as marking the time when Philippine claimants again had access to the court below.

The court, relying on *Marcos, supra,* which it affirmed in its decision of even date with the instant, *Sese* v. *United States,* C. Cls., — 113 F. Supp. 658, ordered the petition dismissed as untimely filed.

Specifications of Errors to Be Urged

The Court of Claims erred

(1) In determining judicially, and in derogation of a function properly within the legislative branch of our Government, that World War II hostilities had so ceased in the Philippines by September 2, 1945, that thenceforth Philippine claimants again had access to the Court of Claims.

(2) In failing to adopt December 31, 1946 (proclaimed by the President as marking the cessation of World War II hostilities), as the date which lifted the wartime suspension of the statute of limitations on such claims.

Reasons for Granting the Writ

The court below, in dismissing as untimely petitioner's claim filed therein, did so in reliance upon its decision in *Marcos* v. *United States,* 122 C. Cls. 641, 106 F. Supp. 172, wherein it had selected September 2, 1945, (when Japan formally surrendered) as the date to lift the World War II suspension of the statute of limitations as to claimants in the Philippines.

Petitioner had asserted below that in fixing a date for the lifting of the wartime limitations suspension, the court had thereby determined the date of the cessation of World War II hostilities in the Philippines, a political matter not within the court's province, but one properly for the

determination of the political branches of our Government.

In its decision, however, the court stated that in *Marcos* it "* * * did not hold that all hostilities in the Philippines had ceased as of that date * * *," but merely that "* * * under all the revealed circumstances in that and similar cases, it appeared that Philippine claimants had access to the Court of Claims on and after September 2, 1945. * * *." (R. 30).

In selecting a date to terminate the wartime tolling of the statute of limitations, the court, of necessity, also selected the date when resort to the court by Filipinos was no longer impossible or illegal, and by the same act, and as a necessary corollary of that act, determined the date when the existence of hostilities had ceased in the Philippines. In *Marcos,* itself, the court had stated (106 F. Supp. at 177):

> "* * * The legal rule heretofore applied to war by English and American courts does not allow the Statute [of limitations] to continue to run during the existence of hostilities, * * *" [Brackets supplied].

Determination of the date of the cessation of hostilities, however, is a political act, not within the province of the court, but resting wholly within the prerogatives of the political branches of our Government.

As recognized from an early date by this Court, the determination of policies in regard to war powers are political acts which by our Constitution are so exclusively granted to the political branches of our Government as to be largely immune from judicial inquiry or interference. *Cf. Harisiades* v. *Shaughnessy,* 342 U. S. 588-589. In *Ludecke* v. *Watkins,* 335 U. S. 160, this Court said that the state of war may be terminated by treaty or legislation or presidential proclamation, and further, that (p. 168):

> "Whatever the mode, its termination is a political act."

It is difficult, if not impossible, to say at what precise date war terminates. Once the political act of determining when hostilities ceased has been undertaken by a political branch of the Government, courts, in the absence of some compelling reasons for not doing so, should follow and apply that determination. *The Protector,* 12 Wall. (.S.) 700, 702; *Hamilton* v. *Kentucky Distilleries,* 251 U. S. 146, *Kahn* v. *Anderson,* 255 U. S. 1.

As stated in *U. S.* v. *Oglesby Grocery Company,* (D.C. N.D. Ga.) 264 F. 691, 692 (rev'd. on other grounds, 255 U. S. 108):

> "The Congress and the President are the constitutional judges of states of war and peace and their decitions should be abided in patience by the people and courts."

The court below's *Marcos* decision, selecting the date of September 2, 1945 was not rendered until July 15, 1952. More than five and one-half years earlier, however, the President, by Proclamation, had fixed December 31, 1946, as the date marking the cessation of World War II hostilities. Proclamation #2714, 61 Stat. 1048, (App. p. 12).

We respectfully submit that in view of the Presidential Proclamation, made long before the court below was faced with the issue, the court should have adopted December 31, 1946, the date selected by the President as the date marking the end of hostilities in the Philippines, and the date after which that court must be deemed, in law, again open and accessible to claimants in the Philippines.

In the *Marcos* decision the court intimated that the date proclaimed by the President as marking the cessation of hostilities of World War II would be unrealistic as applied to the Philippines, in view of the earlier ending of the enemy occupation, and the earlier surrender of Japan. On the other hand, surrender of the other World War II

belligerents, Germany and Italy, had considerably preceded Japan's surrender, hence application of the Proclamation date to the Philippines certainly would be no less realistic[2] than its application with respect to claimants in other areas where World War II was waged. Would the court below reject the Proclamation date in respect of a suit filed by a claimant, otherwise qualified, who was present in Japan, Italy, or Germany throughout the war period? If so, and the court's logic would seem to compel the result, the Proclamation date is a nullity insofar as the statute of limitations is concerned, and the courts have displaced the political department with respect to the function of determining states of war; if not, claimants from those enemy areas would be more favorably treated in this regard than would be claimants from the war-devastated Philippines.

In any event, for the reasons heretofore given, determination of the date of cessation of hostilities was a matter for the political departments and not for the court.

II

In *Ludecke* v. *Watkins*, this Court warned (*supra*, p. 168):

> "Whether and when it would be open to this court to find that a war though merely formally kept alive had in fact ended, is a question too fraught with gravity even to be adequately formulated when not compelled."

This Court further cautioned, *supra*, at p. 170 that judges have neither technical competence nor official responsibility in determining matters of political judgment, and that it was not for the Court to question a belief by the President (then involved) that enemy aliens did not lose their potency for mischief during the period of confusion and conflict

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[2] For reasons indicated in Point II hereof, we submit that the Proclamation date was not unrealistic as applied to the Philippines.

which is characteristic of a state of war, even when the guns are silent "but the peace of Peace has not come."

The very real danger in a court's exercising powers which reside in the political branches of the Government is demonstrated, we believe, only too clearly by this case. In undertaking to find the date of the cessation of hostilities (which is the effect of the court's decision despite the court's disclaimer of that action) the court below selected as one which was logical a date which in point of fact is most unrealistic. While September 2, 1945, marked the date of Japan's surrender, it did not in actuality mark the date of the return of peace, nor the date of the ending of hostilities in the Philippines.

More than six months after Japan's surrender, the House Committee on Insular Affairs reported to the Congress (H. Rept. No. 1921, 79th Cong. 2nd Sess.):

> "The Philippines have been termed 'the most devastated land in the world.'
>
> Official reports, photographic evidence, and statements of those who have seen the ruin and destruction are unanimous in asserting that, of all the war-ravaged areas of the world, the Philippines are the most utterly devastated from the standpoint of the ratio of functional construction still intact to functional construction damaged or destroyed, the effect of destruction on functional economy and social facilities of the nation, and the effect of war damage on the capacity of the nation to rebuild and repair.
>
> Years of rebuilding will be necessary before the former physical conditions in the islands can be restored.
>
> Commercial buildings, stores, and modern office buildings, factories, bridges, docks, transport facilities, communications, utilities—in fact, everything on which the Philippine economy depended—have been destroyed. Every major public building in Manila and throughout the islands, hundreds of thousands of

homes, most of the churches, cathedrals, schools, and universities, felt the impact of destruction. Inter-island commerce was wiped out and disappeared. Roads were damaged almost beyond repair, and everywhere communications were and are disrupted.

Pictures of Manila show that the city was ravaged by the Japanese, and, of necessity, by our own air bombardments and artillery to an extent far greater than the damage done to the cities of Germany; and Manilia is not the worst damaged of the major cities of the Philippines.

With the laying waste of the cities and of the major agricultural and industrial enterprises, sources of tax income to sustain governmental functions, necessarily broader now than ever, have been dried up."

See also, testimony of Frank A. Waring, Chairman, United States Philippine War Damage Commission, given before the House Committee on Foreign Affairs, April 24, 1950, on S. 1033 and H. R. 7600, 81st Congress, Hearings, p. 61-66; Semi-Annual Reports to the Congress by the Philippine War Damage Commission.

The extent of the devastation to the Philippines, the chaotic condition of the country and the confusion and conflict there, characteristic of a state of war, all make it clear that although as of September 2, 1945, the guns may have been silent, as yet the "peace of Peace" had not come. When it would come, when it had come, are matters which the court below had neither the technical competence nor official responsibility to determine.

The President, on the other hand, had available to him information from countless sources, upon which to base his Proclamation. The court below, nevertheless, and in the face of the Proclamation, selected its own date as determinative of the issue. That it so seriously erred in its appraisal of the actualities as to warrant review by this Court seems patent.

III

Use by the court below of the date set forth in the Presidential Proclamation, we submit, not only would have conformed with applicable principles of law, but also would have had the added merits of certainty and fairness to claimants.

Selection by a court, after the fact, of its own "logical" date for the lifting of the war-time suspension of limitations, rather than its use for that purpose of the date established, at the time suspension ceased, by a Presidential Proclamation of cessation of hostilities results in gross uncertainty to litigants. It may even have the effect of depriving a claimant of his day in court, where he fails to divine *in advance* that the court will select its own date, or the date such court will select, however, inconsistent it may be with the relevant date already proclaimed by the President. On the other hand the proclaimed date stands as a warning to all litigants that the period of suspension of the statute is at an end, and that prospective suits must be brought within six years from that date.

In this connection, it is significant that the court below appears to be vacillating from the firm rule which it enunciated in *Marcos*. There the court clearly recognized the necessity for the use of a uniform date for all claimants as providing the only practical and workable rule. However, the court then adopted (erroneously, we contend) September 2, 1945 as the uniform date. *Marcos* v. *United States, supra,* at p. 178.

More recently, the court seems to realize the harshness and inequity of a rigid adherence to the September 2, 1945, date. In both *Sese* v. *United States, supra,* and in the instant case, the court indicates an amenability to considering a later date, if, in a particular case, it is alleged and proven that the particular claimant resided in an un-

liberated portion of the Philippines on September 2, 1945, or for some other reason was inhibited from access to the court on and after that date. See *Sese* v. *United States, supra,* at p. 664; R. 30.

We submit the court below, in *Marcos,* was right in preferring a uniform rule, but wrong in its selection of the particular date. To correct its initial error, it ought not to abandon the sound principle of a uniform rule, but, rather, should accept the Proclamation date as fair, uniform, practical and workable. The other course would compound the court's initial error.

Conclusion

The case presents an important question of Federal law which has not been determined by this Court. We respectfully urge that petition for certiorari be granted.

Respectfully submitted,

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Of Counsel.

APPENDIX

Title 28 USC Section 2501, (June 25, 1948, c 646, 62 Stat. 976), the Statute of Limitations applicable to the Court of Claims, so far as pertinent, provides as follows: .

> 2501. Time for filing suit
>
> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.

The Presidential Proclamation of the cessation of hostilities of World War II (Proclamation No. 2714, 12 F. R. 1, 61 Stat. 1048) is as follows:

> "With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.
>
> Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.
>
> In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.
>
> Done at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the

United States of America the one hundred and
(Seal) seventy-first.

HARRY S. TRUMAN.

By the President:
JAMES F. BYRNES,
The Secretary of State.

The August 31, 1946, amendment to Treasury Department Foreign Funds Control, General Ruling No. 18, as as follows:

Under Executive Order No. 8389, as Amended, Executive Order No. 9193, as Amended, Sections 3(a) and 5(b) of the Trading with the Enemy Act, as Amended by the First War Powers Act, 1941, Relating to Foreign Funds Control.

General Ruling No. 18 is hereby amended to read as follows:

Regulations Relating to the Philippines

(1) Status of the Philippines. For the purpose of administering and complying with the provisions of Sections 3(a) and 3(c) of the Trading with the Enemy Act, as amended, Executive Order No. 8389, as amended, and the regulations, rulings, instructions and licenses issued by or under the direction of the Secretary of the Treasury pursuant to Executive Orders No. 8389 and 9095, as amended, the Philippines shall not be included within the term "United States" but shall be deemed to be a foreign country not designated in Executive Order No. 8389, as amended, and to be included in the "generally licensed trade area" as defined in General License No. 53.

(2) Effect of previous status. No person shall be deemed a national of a blocked country solely by reason of the fact that at any time on or since the effective date of the Order of the Philippines were regarded as a blocked country.

(3) Waiver of General Ruling No. 5 on importations of securities and currency from the Philippines. The provisions of General Ruling No. 5 shall not apply to

securities or currency sent, mailed, imported or otherwise brought into the United States from the Philippines, unless there is reasonable cause to believe that such securities or currency are being brought into the United States via the Philippines from any other foreign country.

E. H. FOLEY, JR.,
Acting Secretary of the Treasury.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 399

LAND SETTLEMENT AND DEVELOPMENT CORPORATION, PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 29-31) is reported at 113 F. Supp. 666.

JURISDICTION

The judgment of the Court of Claims was entered on July 13, 1953 (R. 29). The petition for a writ of certiorari was filed on October 9, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether a complaint filed on July 23, 1952, by a corporation owned or controlled by the Philippine Government, to recover compensation for property allegedly taken between December 8, 1941, and May 31, 1942, was barred by the six-year statute of limitations of 28 U.S.C. 2501, *infra*, the Philippine Islands having been occupied by the Japanese armed forces during a portion of that time.

STATUTES INVOLVED

1. 28 U.S.C. 2501, pars. 1 and 3, provides:

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.
>
> * * * * *
>
> A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.
>
> * * * * *

2. Section 2(a) of the Trading with the Enemy Act, 40 Stat. 411, 50 U.S.C. App. 2(a), provides:

> SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

3. Proclamation No. 2714 of December 31, 1946, 61 Stat. 1048, 12 F.R. 1, provides as follows:

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do

hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

STATEMENT

This case was decided by the Court of Claims upon the petition (R. 1-4) and a motion to dismiss for lack of jurisdiction based on 28 U.S.C. 2501 (R. 28). The salient facts, as alleged in the petition, may be summarized as follows:

Petitioner is a corporation incorporated under the laws of the Republic of the Philippines (R. 1, 5-11). It is the successor in interest to the National Land Settlement Administration (R. 1), a corporation incorporated by an act of the Legislature of the Commonwealth of the Philippines, which was owned and controlled by the Philippine Government (R. 1, 13-17). National Land Settlement Administration was dissolved and its assets were transferred to petitioner (R. 1, 2, 10) by virtue of the exercise of reorganization powers conferred upon the President of the Philippines (R. 1, 12-13).

Between December 8, 1941, and May 31, 1942, the United States forces in the Far East "by the exigencies of the war, commandeered or otherwise destroyed to keep from falling into the hands of the enemy" a considerable number of automobiles, trucks, tractors, and other property belonging to the National Land Settlement Administration in the total amount of Pesos 230,088.35 or $115,044.17 (R. 3-4, 20-28). A request for compensation submitted to the Army Claims Service, Philippines-

Ryukyus Command, on February 11, 1948 (R. 1, 17-19), was denied on April 12, 1948, on the ground that the Claims Service did not have any authority to pay claims submitted by the former Commonwealth of the Philippines or any public corporation owned in whole or in part by it (R. 2, 20).

On July 23, 1952, petitioner filed its petition in the Court of Claims seeking compensation for the property "commandeered or otherwise destroyed." The Government moved to dismiss the claim for lack of jurisdiction, on the ground that the claim was barred by the statute of limitations, 28 U.S.C. 2501 (R. 28). Petitioner in reply contended that the statute of limitations was suspended until December 31, 1946, the date of the cessation of hostilities as proclaimed by the President. The Court of Claims, adhering to its decision in *Tan* v. *United States,* 122 C. Cls. 662, certiorari denied, 344 U.S. 895,[1] held that the suspension of the six-year statute of limitations resulting from the occupation of the Philippine Islands by the enemy was lifted on September 2, 1945, the date of the Japanese surrender (59 Stat. 1733), and dismissed the complaint.

ARGUMENT

This complaint, based upon the taking of property of a Philippine Government corporation between December 8, 1941 and May 31, 1942 (R. 3),[2]

[1] While the opinion below did not mention expressly the *Tan* case, it referred to its reasoning in *Sese* v. *United States,* 113 F. Supp. 658, 660, 664, decided the same day (R. 30), which in turn expressly adhered to the decision in *Tan* v. *United States.*

[2] It will be noted that the complaint does not allege that the United States used petitioner's property or that it took it for the

was filed on July 23, 1953 (R. 1), *i.e.*, more than ten years after the alleged taking occurred,[3] more than 7½ years after the return to the Philippines of President Osmena's government, more than seven years after the restoration on April 16, 1945, of commercial mail service between the United States and Manila as well as after General MacArthur's and President Osmena's Proclamations of July 5, 1945, announcing the complete liberation of the Philippine Islands,[4] and more than six years after July 4, 1946, the date on which the Philippines became fully independent. Proclamation No. 2695, 60 Stat. 1352.

1. The Court of Claims held that the suspension of the statute of limitations caused by petitioner's temporary enemy status was lifted on September 2, 1945, and dismissed the complaint. In so doing it adhered to its decision in *Tan* v. *United States*, 122 C. Cls. 662, certiorari denied, 344 U.S. 895, and to the large number of cases following the *Tan* opinion.[5] The decision below reaches the correct

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purpose of using it, but that the United States "by the exigencies of the war, commandeered or otherwise destroyed to keep from falling into the hands of the enemy" certain motor vehicles. Under the recent decision of this Court in *United States* v. *Caltex, Ins.*, 344 U.S. 149, decided after the motion to dismiss had been filed in this case, it may well be that these allegations fail to state a cause of action against the United States.

[3] The cause of action pleaded in this complaint accrued at the time of the taking. *United States* v. *Berdan Fire-Arms Co.*, 156 U.S.552, 570-572; *United States* v. *North American Co.*, 253 U.S. 330; *United States* v. *Dickinson*, 331 U.S. 745; *Tan* v. *United States*, 122 C. Cls. 662, 663, certiorari denied, 344 U.S. 895.

[4] Cf. *Marcos* v. *United States*, 122 C. Cls. 641, 646, 657-659.

[5] *De Guia* v. *United States*, 122 C. Cls. 665, certiorari denied, 344 U.S. 895; *Lorenzo* v. *United States*, 122 C. Cls. 667, certiorari denied, 344 U.S. 895; *Navarro* v. *United States*, 122

result,[6] there is no conflict, and the petition does not raise any issues which had not been submitted for the consideration of this Court in *Tan* v. *United States,* No. 382, Oct. T., 1952, certiorari denied, 344 U.S. 895, and *De Guia and Palmares* v. *United States, Lorenzo* v. *United States,* and *Navarro* v. *United States,* No. 386, Oct. T. 1952, certiorari denied, 344 U.S. 895. We submit, accordingly, that further review is unwarranted.[7]

2. Petitioner contends that its complaint filed on July 23, 1952 (R. 1) for property destroyed more than ten years earlier was timely because the six-year statute of limitations of 28 U.S.C. 2501 did not

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C. Cls. 669, certiorari denied, 344 U.S. 895; *Purino* v. *United States,* 123 C. Cls. 739; *Aguirre* v. *United States,* 123 C. Cls. 767; *Rodriguez* v. *United States,* 124 C. Cls. 551; *Arribas* v. *United States,* 124 C. Cls. 553; *Hodges* v. *United States,* 111 F. Supp. 268; *Sese* v. *United States,* 113 F. Supp. 658; *Porras* v. *United States,* 113 F. Supp. 664; *Angeles* v. *United States,* 113 F. Supp. 665; *Tabacug* v. *United States,* 113 F. Supp. 666; *De Rubin* v. *United States,* 113 F. Supp. 668; *Martin* v. *United States,* 113 F. Supp. 669; *Silva* v. *United States,* 113 F. Supp. 670; *Lindayag* v. *United States,* 113 F. Supp. 671; *Ramcar, Inc.* v. *United States,* 113 F. Supp. 672; *Anno* v. *United States,* 113 F. Supp. 673. On October 5, 1953, the Court of Claims dismissed 16 petitions containing some 71 claims in open court for the same reason.

[6] The United States takes the position that the court below reached the correct result. We submit, however, that the jurisdictional limitation period of 28 U.S.C. 2501 can be suspended only on the basis of express statutory grounds; that, in any event, assuming the prescriptive period of 28 U.S.C. 2501 was suspended by virtue of petitioner's enemy status, the statute began to run earlier than September 2, 1945; and finally that, following the end of the suspension period, petitioner had merely three years within which to file its complaint (28 U.S.C. 2501, par. 3, *supra,* p. 2).

[7] As far as known to us, the Court of Claims has by now dismissed all complaints filed after September 2, 1951, based upon requisitions in the Philippine Island during the Japanese occupation. Cf. fn. 5, *supra.* Accordingly, the importance of the question presented by this petition is severely limited.

begin to run until December 31, 1946, the date of the cessation of hostilities, and that the Court of Claims usurped executive or legislative functions when it selected the surrender day of September 2, 1945, as the date on which the six-year statute of limitations began to run. It seems to infer that it acquired an "enemy" status as a result of the occupation of the Philippines and that that enemy status did not terminate until the Presidential proclamation of December 31, 1946. We submit that the existence or termination of hostilities had no bearing on petitioner's enemy status, and the Proclamation of December 31, 1946, did not, and was not intended to, have any effect upon the suspension of the statute of limitations in the instant case.

(a). Petitioner's inability to resort to the United States courts, which is the asserted basis for the suspension of the statute of limitations,[8] was brought about not by the mere existence of hostilities or the circumstance that petitioner was a resident or citizen of a country with which the United States was at war. No state of war ever existed between the United States and the Philippine Islands.[9] Petitioner was denied access to the courts

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[8] *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Levy* v. *Stewart*, 11 Wall. 244; *Stewart* v. *Kahn*, 11 Wall. 493; *Standard Vacuum Oil Co.* v. *United States*, 112 C. Cls. 137, vacated on other grounds, 339 U.S. 157; *Marcos* v. *United States*, 122 C. Cls. 641, 645-646, 654; cf. *Ex parte Colonna*, 314 U.S. 510, 511; Trading with the Enemy Act, Section 7(b), par. 3, 40 Stat. 417, 50 U.S.C. App. 7(b), par. 3.

[9] To the contrary, until July 14, 1946, the Philippine Islands were subject to the sovereignty of the United States. Act of March 24, 1934, Secs. 2, 10, 48 Stat. 456, 463. Similarly, prior to July 4, 1946, a person born in the Philippine Islands was a

of the United States only by virtue of the seizure of the Philippine Islands by the Japanese which made it a corporation incorporated in territory occupied by the military forces of a nation with which the United States was at war (Trading with the Enemy Act, Section 2(a), *supra,* pp. 2-3) and brought it within the statutory definition of an enemy. This technical status as an enemy, however, lasted only during the period of enemy occupation and came to an end when the Japanese vacated the Philippines; its termination did not require the conclusion of a formal peace treaty.[10] *Drewry* v. *Onassis,* 188 Misc. (N.Y.) 912, 913-914, affirmed, 272 App. Div. 870, leave to appeal denied, 272 App. Div. 960; *Chuchuru* v. *Chutchurru,* 185 F. 2d 62 (C.A. 10);[11] cf. *United States* v. *Rice,* 4 Wheat. 246, 254, and *United States* v. *Hayward,* 2 Gall. 483, 501, 26 Fed. Cas. 240, 246 (C.C.D. Mass.), discussing analogous problems arising from the occupation of Castine, Maine, during the War of 1812.

(b). As to the claim that the court below usurped a function of the political branch of the Government

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national of the United States. Nationality Act of 1940, Section 204(a), 54 Stat. 1137, 1139, 8 U.S.C. (1946 ed.) 604(a). Cf. *Cabebe* v. *Acheson,* 183 F. 2d 795 (C.A. 9).

[10] The Court of Claims properly pointed out in *Sese* v. *United States,* 113 F. Supp. 658, 664, that nobody contemplates the conclusion of a peace treaty with a liberated friendly or neutral country. Petitioner would have been the first to complain if anyone had claimed after the spring of 1945 that it remained subject to the disabilities of an enemy until the Proclamation of the end of hostilities or the conclusion of a peace treaty.

[11] See also Treasury Department, General Ruling No. 18, 10 F.R. 6170, removing the stigma of the classification as "enemy territory" from any portion of the Philippine Islands controlled or occupied by the military, etc., forces of Japan *immediately upon liberation.*

when it determined that the suspension of the statute of limitations came to an end on September 2, 1945, we submit that, if the court below committed error on that score, it did not prejudice petitioner. The only political determinations of the liberation of the Philippine Islands of which we are aware are the statements made by General MacArthur and President Osmena on July 5, 1945, that the Philippine Islands had been completely liberated (*supra*, p. 6). Petitioner cannot complain of the selection by the court below of a date more favorable to it.

The Proclamation of December 31, 1946, (*supra*, pp. 3-4) has no bearing on petitioner's access to the courts of the United States or the suspension of the statute of limitations resulting from a person's status as an enemy. Its purpose was to provide for the expiration of certain statutes enacted "for the duration of the hostilities,"[12] considering that by then the pressing problems of demobilization and reconversion were for the most part resolved in the United States.[13] Cf. concurring opinion of Mr. Justice Clark in *United States* v. *Smith*, 342 U.S. 225, 230. To the contrary, this Court has pointed

[12] Cf. H. Doc. 282, 79th Cong., 1st Sess., pp. 107-114. "Cessation of hostilities" is not a term of art which entails well defined legal consequences. The clause was rarely used before World War II, and there was no judicial authority as to its meaning, see Note, *Judicial Determination of the End of the War*, 47 Columbia L.R. 255, 262. And there was no express Proclamation of the End of Hostilities following World War I. Hudson, *The Duration of the War between the United States and Germany*, 39 Harv. L.R. 1020, 1030.

[13] We cannot perceive what bearing the Proclamation of December 31, 1946, could have on conditions in the Philippine Republic, which by then was an independent country. Cf. Pet., p. 9.

out that since the Proclamation acknowledged the continued existence of a state of war, it did not terminate the enemy status of an alien. *Ludecke* v. *Watkins,* 335 U.S. 160, 170.

CONCLUSION

The decision below is correct in the result. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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